



Docket No. 4554/87215

FF9

K. Cobb
9/24/02

1-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT: Stockman
SERIAL NO.: 09/615,683
FILED: 14 July 2000
FOR: Backpack and Chair Apparatus
EXAMINER: Gregory M. Vidovich
GROUP: 3727

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APPEAL BRIEF UNDER 37 C.F.R. §1.192

Applicants respectfully appeal the decision of Examiner Vidovich, dated 14 February 2002, finally rejecting claims 1 - 23, i.e., all of the claims pending in the present application. This brief is being filed in triplicate.

FEE AUTHORIZATION

Please charge the brief fee and time extension fee due in connection with this filing to our Deposit Account, No. 19-0733.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is James Stockman, named inventor in the above-identified application.

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II. RELATED APPEALS AND INTERFERENCES

Appellant hereby confirms that there are no other appeals and/or interferences related to this application.

III. STATUS OF CLAIMS

Claims 1 - 23 have been presented in the above-identified application.

No claims have been withdrawn from consideration pursuant to a Restriction Requirement.

No claims have been were cancelled during prosecution.

No claims have been allowed, but Claim 18 has not been rejected based upon any prior art.

Claims 1 - 23 are presently on appeal (see the attached Appendix).

IV. STATUS OF AMENDMENTS (AFTER FINAL REJECTION)

The Applicant filed no response under Rule 116.

V. SUMMARY OF INVENTION

As disclosed at pages 4-8 (and particularly in original Figure 4), the present invention relates generally to a backpack and chair apparatus with the ability to convert between a balanced backpack and a structurally rigid chair of normal household size. The conversion requires only nominal assembly and effort, does not disrupt the pack load or its accessibility, and requires no tools

or separate parts. This advantageously increases the simplicity of pack stowage and the availability of a chair upon demand by those who would otherwise tote a separate chair within or upon a backpack.

VI. ISSUES

- (1) Whether claims 1, 2, 4, 5, 6, 9, 10, 12, 19, and 23 are unpatentable under 35 U.S.C. §102 as anticipated by Black.
- (2) Whether claims 3, 11, and 20 are unpatentable under 35 U.S.C. §103 over Black in view of MacLean ('064).
- (3) Whether claims 7, 8, 13, 14, 16, and 23 are unpatentable under 35 U.S.C. §103 over Black in view of Fisher
- (4) Whether claim 15 is unpatentable under 35 U.S.C. §103 over Black in view of Fisher as applied above and further in view of MacLean ('064).
- (5) Whether claims 17 and 22 are unpatentable under 35 U.S.C. §103 over Black in view of Fisher as applied above and further in view of Gatling.
- (6) Whether claims 1 - 23 are unpatentable under 35 U.S.C. §112, first paragraph, as based upon a non-enabling disclosure.
- (7) Whether claims 18, 22 and 23 are unpatentable under 35 U.S.C. §112, first paragraph, as not being described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was

filed, had possession of the claimed invention.

- (8) Whether claims 1 - 23 are unpatentable under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- (9) Whether the proposed drawing corrections and/or the proposed substitute sheets of drawings, filed on November 27, 2001 introduce new matter into the drawings.
- (10) Whether the Examiner may force an applicant to prepare and file formal drawings before allowance of the claimed invention.
- (11) Whether the original specification and drawings sufficiently show how latch 12, 13 operates.

VII. GROUPING OF CLAIMS

Appellant believes that all of the claims under appeal are separately patentable for the reasons set forth in the argument section that follows.

VIII. ARGUMENT

1. Rejections under 35 U.S.C. §112, first paragraph:

For each rejection under 35 U.S.C. §112, first paragraph, the argument shall specify errors in the rejection and show how the first paragraph if 35 U.S.C. §112 is in fact complied with, including, as appropriate, how the specification and drawings (if any):

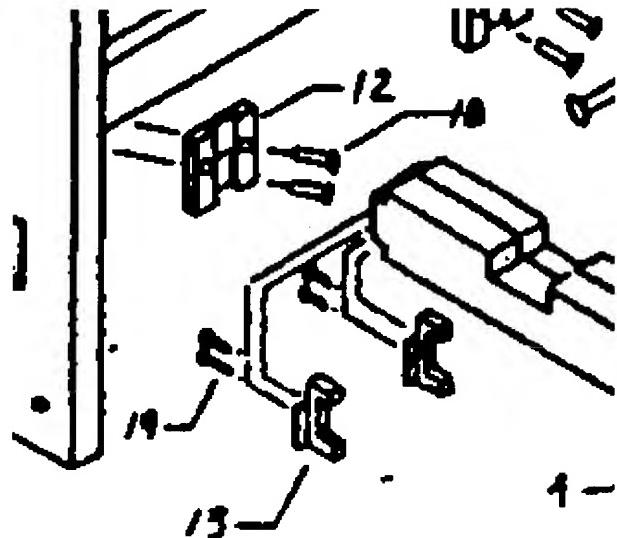
- (a) describe the subject matter defined by each of the rejected claims,
- (b) enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and
- (c) set forth the best mode contemplated by the inventor of carrying out his or her invention.

Claims 1-23 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 1, the Examiner contends that the "latch" which, by disclosure, is part of the "locking assembly" is vaguely described rendering an ordinary artisan to speculate as to how this latch operates and performs. Appellant respectfully disagrees.

The term "latch" as used in this specification, is used in its ordinary sense - as "any of various mechanical devices in which mating mechanical parts engage (and disengage) to fasten one another." The term is well understood by those having ordinary skill in the mechanical arts.

Figure 4 shows the "latch" as consisting of parts 12 and 13, as follows:



The claimed locking assembly includes the latch pieces illustrated, but other similar mechanical devices would likewise suffice. As fully set forth in the specification in describing the preferred embodiment, the parts 12 and 13 are defined as "bottom frame brace catch (12)" and "locking brace catch (13)." As illustrated, these are two interlocking members which operate by the male piece (13) sliding into the female piece (12) to stabilize the chair form of the frame.

The Examiner's confusion may lie in the fact that in original Figure 4, the lower locking braces (4) and (4a) are shown next to one another, whereas in reality they would be spaced apart - the width of the backpack frame. This compressed view of Figure 4 was simply used to show all of the elements without using excess pages of drawings.

Claims 18, 22 and 23 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

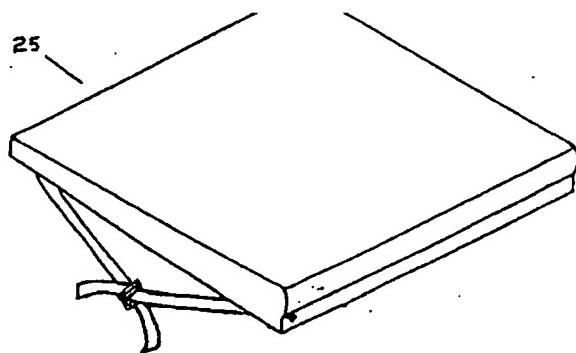
invention.

Regarding claim 18, the strap merely being attached only to the sub frame is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Appellant respectfully disagrees. As stated at page 3, lines 2-4: "The pack and straps are attached to the frame to enable the frame and pack to be carried on one's back when loaded with gear. This is the backpack mode of the apparatus." What more is required under Section 112?

Regarding claim 22, the cushion being attached merely by "side release buckles" is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Appellant respectfully disagrees. At page 3 the cushion is described as being "removably attached to the sub-frame." Figure 4 illustrates the cushion as follows:



Appellant submits that the "strap" shown in Figure 4 supports the "side release buckles" language complained of by the Examiner. One is clearly shown in the Figure (the other being hidden in this view).

Regarding claim 23, the male and female locking braces are subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Appellant respectfully traverses this rejection as previously discussed. The male and female locking braces comprise braces (4) and (4a) which further include the locking parts (12) and (13) previously discussed above.

Appellant submits that original Figure 4 fully supports the claimed invention under Section 112, first paragraph, and the Examiner's objections and/or rejections thereunder should be reversed.

2. Rejections under 35 U.S.C. §112, second paragraph:

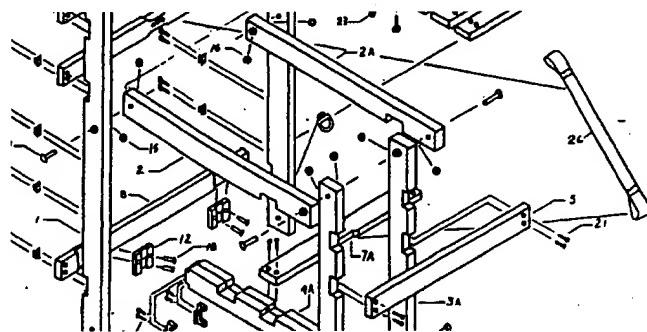
For each rejection under 35 U.S.C. §112, second paragraph, the argument shall specify the errors in the rejection and specify how the claims particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

Claims 1-23 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, as discussed above, the operation of the locking assembly is unclear rendering the claim indefinite.

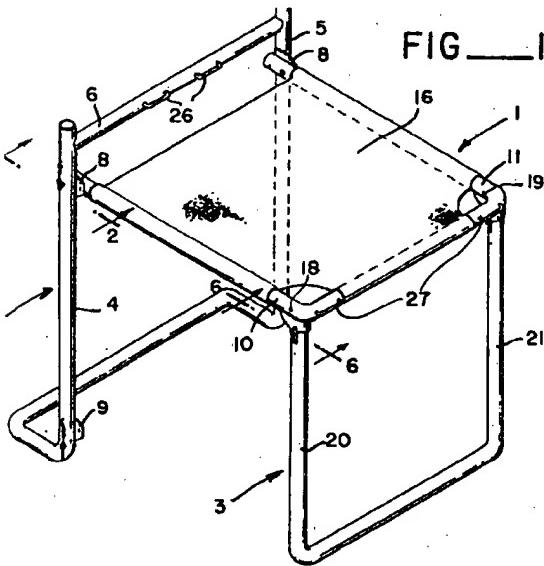
The locking assembly is fully taught in Figure 4 as filed and in the description in the specification of the parts that make up the locking assembly. This rejection should be reversed.

Regarding claim 18, it is unclear as to how the strap can operate as a sway brace if attached only to the subframe. Here the Examiner confuses the shoulder straps (27) with brace strap (26). See Figure 4:



pack load or its accessibility, and requires no tools or separate parts..

The Black reference discloses a backpack and a frame which converts into a "folding stool" as defined therein. There is no "chair back" as required by the plain meaning of the term "chair" as used in claim 1, and thus, this reference fails to anticipate the rejected claims. This rejection should be reversed for this simple reason - Black teaches a stool, the present inventor teaches and claims a chair - an object typically having a seat, four legs, and a back - for sitting use by one person.



4. Rejections under 35 U.S.C. §103:

For each rejection under 35 U.S.C. §103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art.

Claims 3, 11, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of MacLean ('064).

Claims 3 and 11 depend either directly or indirectly from Claim 1 and contain all of the limitations thereof. Moreover, it is noted that the primary reference used in support of this obviousness rejection is the Black patent, which has been distinguished above. Black fails to teach the required "chair" aspect of the present invention, and nothing in the Black reference, considered either alone or in combination with any other reference cited by the Examiner, would motivate the artisan to modify the Black "stool" into a "chair" as required by the claims. The Black teaching is clear and specific - the frame provides a stool for use by hunters, campers, etc. If they wanted a chair, the Black reference does not provide it.

As admitted by the Examiner, Black is silent (regarding claim 3) as to whether the pack is removable from the stool frame. However, to find this feature in the art, the Examiner cites the MacLean reference.

MacLean's invention consists of a folding aluminum lawn chair with a backpack attached to it. See Figure 5. Unlike the present invention, MacLean does not provide a true "backpack" frame as those having ordinary skill in the art commonly use that term. A backpack "frame" rides against the users' body and assists in load distribution and prevents injury to the wearer of a backpack. In the MacLean patent, the user carries the backpack by the shoulder straps and the "chair frame" rides on the outside - away from the user's body.

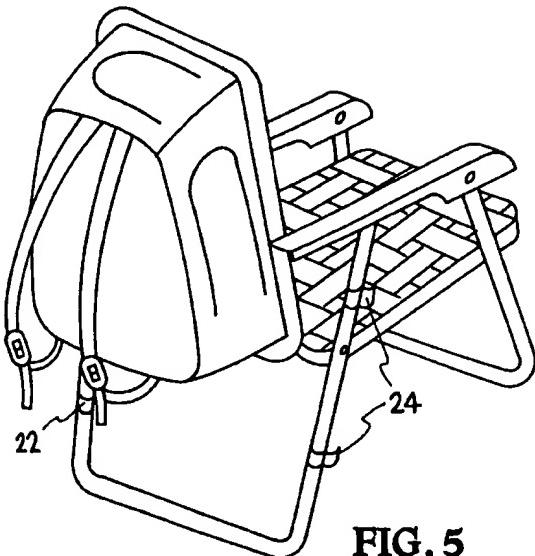


FIG. 5

Clearly, the teachings of Black and MacLean are not compatible, as one employs a traditional backpack frame (convertible to a stool) and the other has simply strapped a lawn chair onto the outer portion of a backpack - using no other frame to carry this load.

Accordingly, Appellant submits that this proposed combination of art fails to teach or suggest the rejected claims and the Examiner should thus be reversed in this rejection.

Claims 7, 8, 13, 14, 16, and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher.

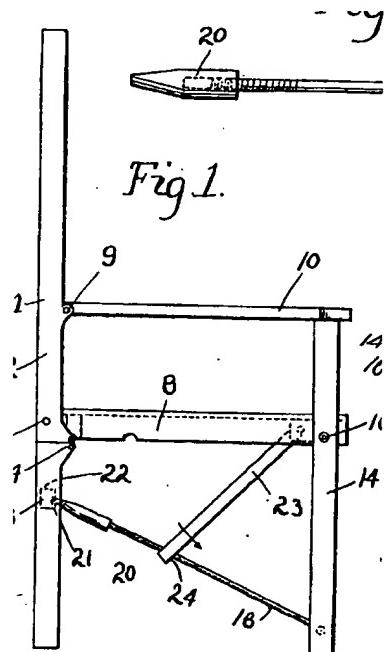
The Black reference discloses a backpack and a frame which converts into a "folding stool" as defined therein. There is no "chair back" as required by the plain meaning of the term "chair" as used in claim 1, and thus, this reference fails to anticipate the rejected claims. This rejection should be reversed for this simple reason - Black teaches a stool, the present inventor



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teaches and claims a chair - an object typically having a seat, four legs, and a back - for sitting use by one person.

Fisher discloses a folding chair, similar in design to the Appellant's preferred embodiment, but Fisher makes no mention, teaching or suggestion of the use thereof as a backpack frame. Fisher also shows arms for the chair and other component parts that would not be useful in the backpack frame of the claimed invention.



Apparently the Examiner relies upon the Fisher patent as providing support for rejecting the locking assembly recited in the rejected claims. This rejection ignores the other limitations of the invention as a whole and amounts to a piecemeal rejection of individual elements.

As the Federal Circuit has repeatedly stated, "virtually all

inventions are combinations of old elements." Therefore, an Examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. To counter this potential weakness in the obviousness construct, the "suggestion to combine" requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. Applicant submits that it is the "suggestions to combine" that is lacking in all of the Section 103(a) obviousness rejections made in this Office Action. Where is the motivation? It must come from the prior art, not from Applicant's disclosure.

Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of MacLean ('064).

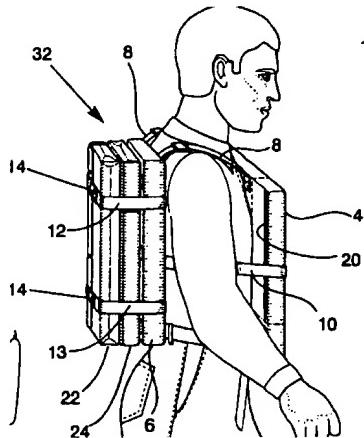
This rejection relies upon a proposed combination of three distinct references - Black, which teaches a pack and stool combination; Fisher which teaches collapsible furniture and MacLean which teaches a lawn chair mounted to a backpack, but not as a frame member.

Claim 15 depends directly from independent Claim 13 and includes all of the limitations thereof, including the conversion of the unit from backpack frame to chair. None of these references teaches or suggests this clear requirement and accordingly the Examiner should be reversed in this rejection.

Claims 17 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of Gatling.

As discussed above, the Black reference merely discloses a backpack and a frame which converts into a "folding stool" as defined therein. There is no "chair back" as required by the plain meaning of the term "chair" as used in the rejected claims.

As illustrated, for example in Figure 3, Gatling teaches a backpack with extra cushions mounted thereto to serve as seat cushions in hunting stands.

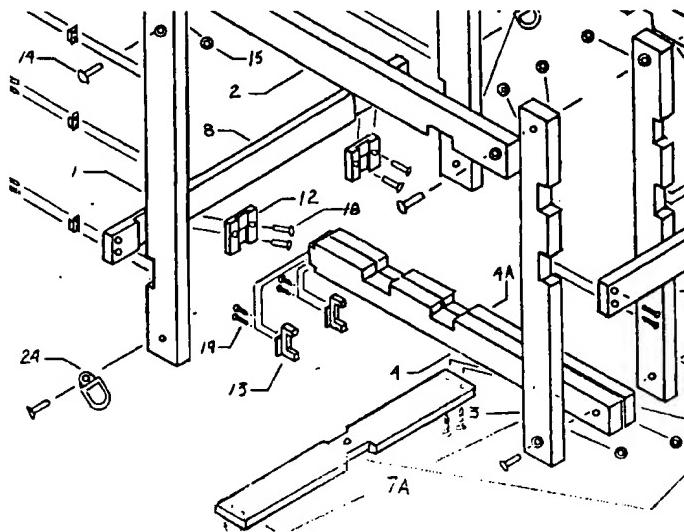


Nothing in Gatling either teaches or suggests a backpack frame that converts from a pack frame to a chair. Nothing in Gatling either teaches or suggests the rejected claims. The proposed combination of Black and Gatling, at best, would provide a stool with one or more removable seat cushions. That is not the present invention. Accordingly, the Examiner should be reversed.

5. Other Rejections:

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on November 27, 2001 have been disapproved because they introduce new matter into the drawings. Appellant respectfully disagrees.

Replacement Figure 4 was simply a better version of original Figure 4 with the list of materials removed. A portion of the new Figure 4 is shown below:



Proposed Figures 5 and 6 were provided as "close-up" views showing the elements (12) and (13) of original Figure 4 in the "open" position (new Fig. 5) and closed position (new Fig. 6), as follows:

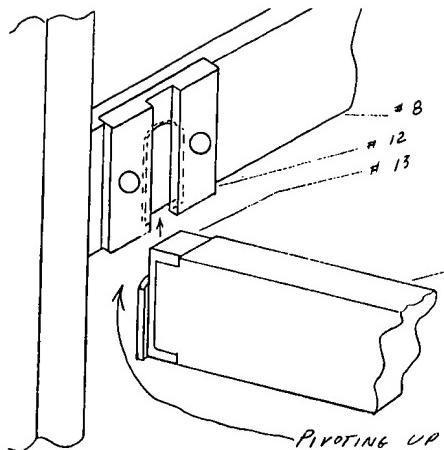


FIGURE # 5

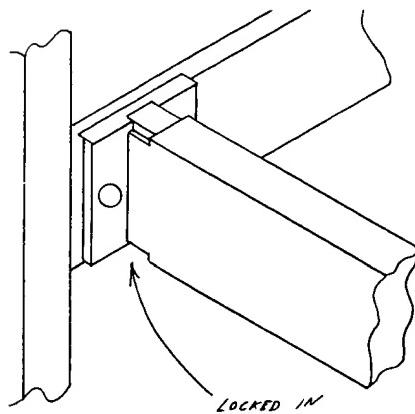


FIGURE # 6

Appellant appreciates the fact that no amendment may introduce new matter into the disclosure of an application. However, Appellant submits that these two proposed new drawings do not make any such addition. They are simply "bigger" renditions of the original disclosure, and thus they should be acceptable. Reversal of the Examiner's position is respectfully requested.

Finally, the Examiner has made a formal drawing requirement with a

threat of abandonment if the Applicant failed to comply. This is unreasonable until allowable subject matter has been indicated, otherwise why should the Applicant spend money needlessly on formal drawings?

- a) Figures 1 and 2 include lead lines with no reference characters. Agreed, and this would be corrected in the formal drawings to be filed upon allowance.
- b) The upper grooves in elements 4 and 4a in figures 3 and 4 are not shown in Figure 2. Agreed, and this would be corrected in the formal drawings to be filed upon allowance.
- c) It is unclear as to what applicant intends as the latch 12, 13 and as to how this latch performs. This has been addressed above, and proposed Figures 5 and 6 would have further clarified this point.
- d) The reference characters in figure 4 are too small and not readily legible. Agreed, and this would be corrected in the formal drawings to be filed upon allowance.
- e) The list of chair parts in figure 4 includes markings which should be corrected. Agreed, and this would be corrected in the formal drawings to be filed upon allowance.

Appellant simply asks the Board to accept the Appellant's contention position that formal drawings were not necessary during the examination of this application. Copies of the drawings as filed are shown on the following pages:



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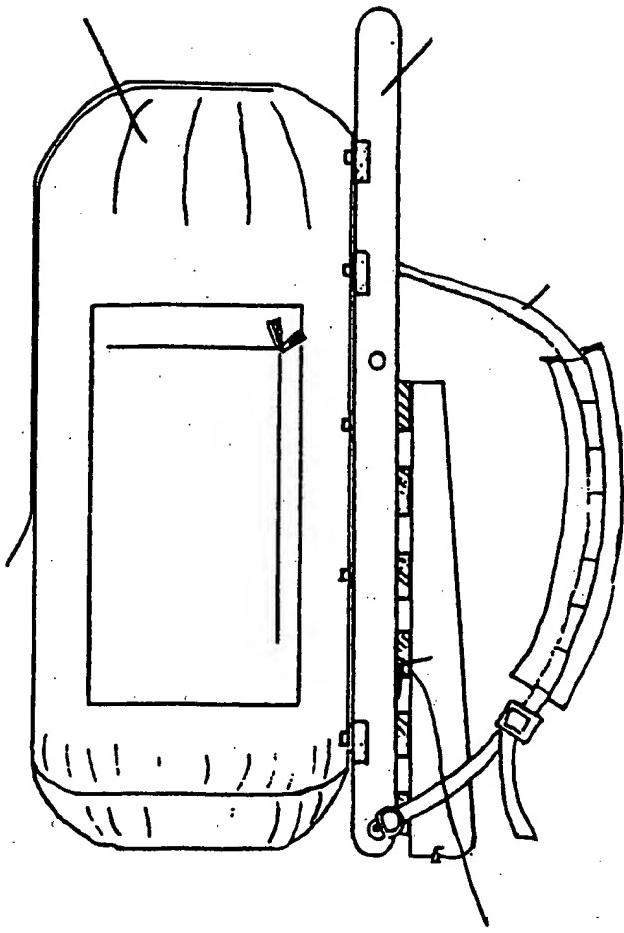


FIGURE #1

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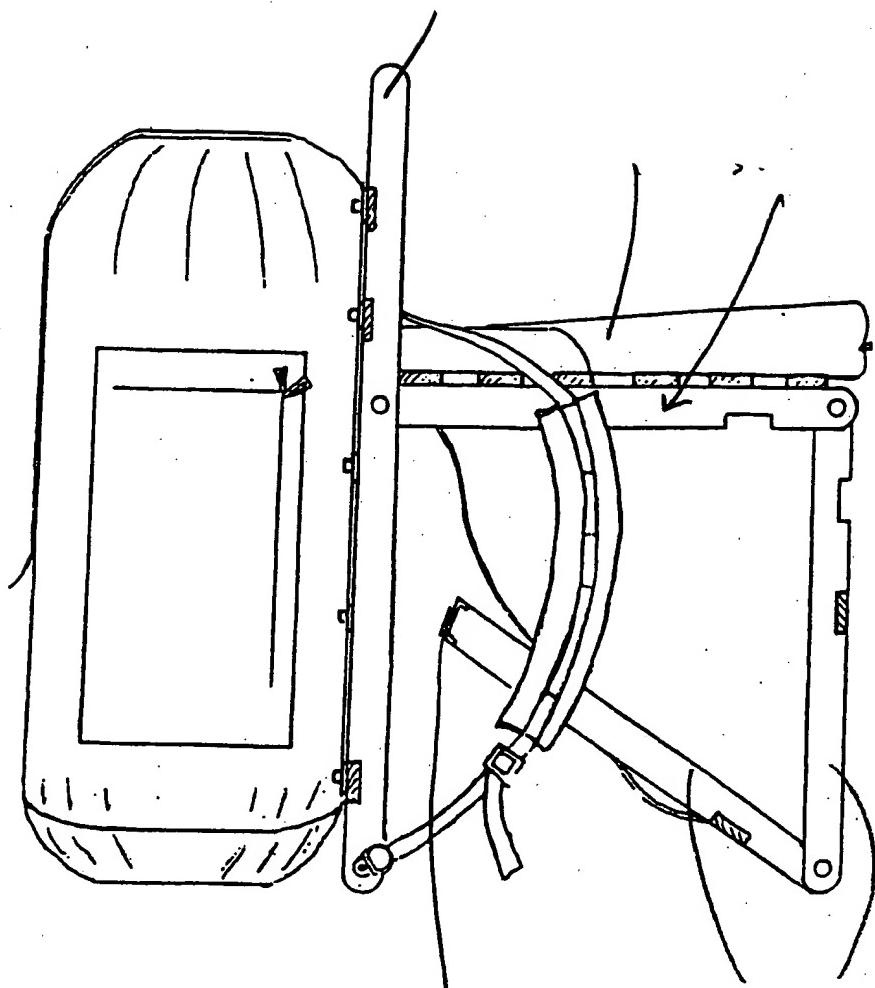


FIGURE #2

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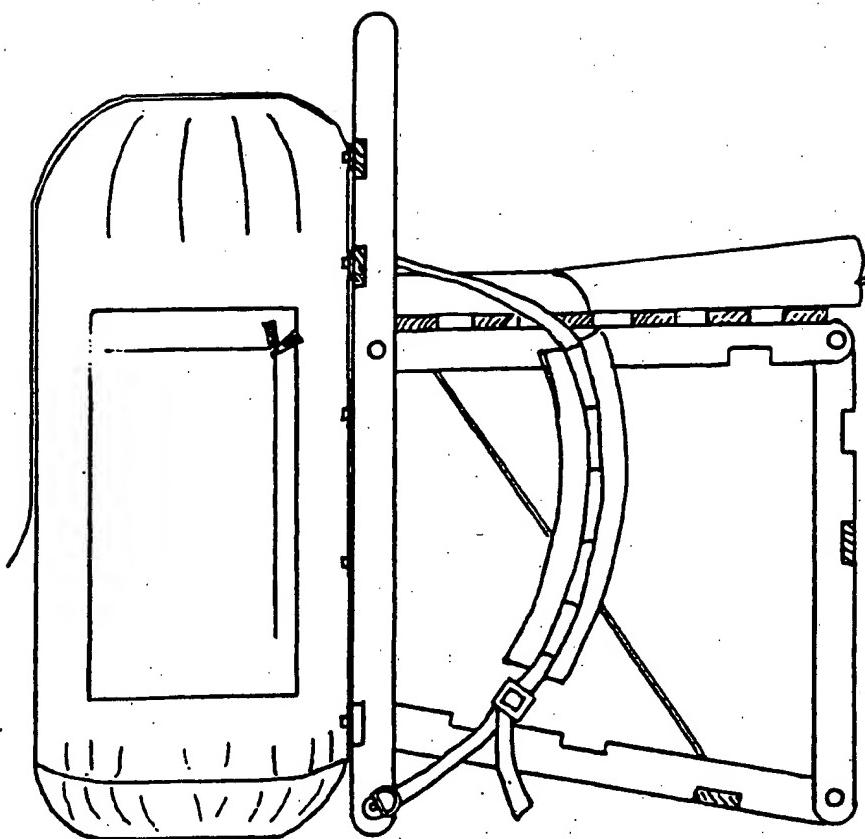
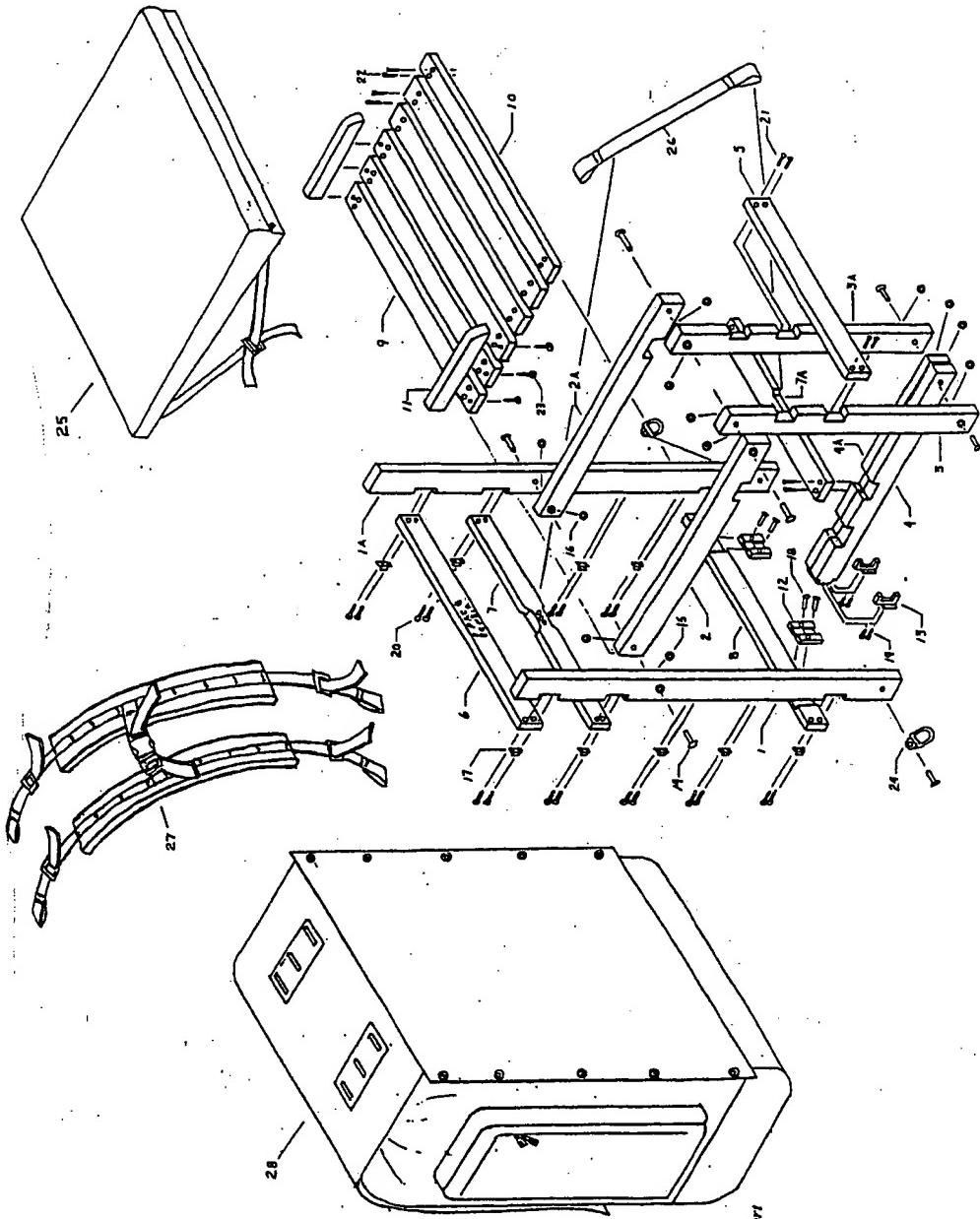


FIGURE #3



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PAC-A - CHAIR PARTS

- | | |
|----|---|
| ① | Left Frame Upright |
| ② | Right Frame Upright |
| ③ | Left Seat Support |
| 2a | Right Seat Support |
| 3 | Left Chair Leg |
| 3a | Right Chair Leg |
| 4 | Left Locking Brace |
| 4a | Right Locking Brace |
| 5 | Chair Leg Brace |
| 6 | Top Frame Brace |
| 7 | Top Strap Brace |
| 7a | Bottom Strap Brace |
| 8 | Bottom Frame Brace |
| 9 | Inside Seat Slats 3 pc. |
| 10 | Outside Seat Slats 3 pc. |
| 11 | Seat Brace 2 pc. |
| 12 | Bottom Frame Brace Catch |
| 13 | Locking Back Catch |
| 14 | 1 1/4 x 5/16 Rivet |
| 15 | Spacer washer |
| 16 | Rivet Washer |
| 17 | Turn Buckle |
| 18 | Slide Catch Rivet |
| 19 | Slide Catch Screws # 6 x 3/4 |
| 20 | Turn Buckle Screws # 6 x 3/4 |
| 21 | Brass # 8 x 1 |
| 22 | Seat Slate Screw # 8 x 1 |
| 23 | Seat Brace Screw # 6 x 3/4 |
| 24 | D Ring |
| 25 | Wedge Shape Seat Cushion / Back Support |
| 26 | Brace Strap |
| 27 | Shoulder Strap |
| 28 | Dark Bag |

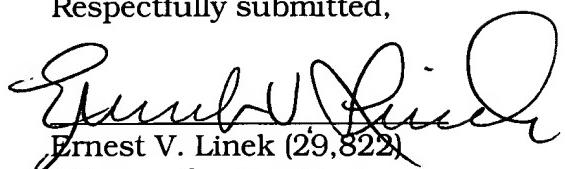
FIGURE #4

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X. SUMMARY

For the reasons set forth herein, it is respectfully requested that the Board reverse the Examiner in this application.

Respectfully submitted,


Ernest V. Linek (29,822)
Attorney for Appellant
BANNER & WITCOFF, LTD.
28 State Street, 28th Floor
Boston, MA 02109-1775
(617) 227-7111

Dated: 16 September 2002

APPENDIX
CLAIMS ON APPEAL

1. A backpack and chair apparatus, comprising:
 - a storage pack;
 - a frame attached to said storage pack, providing rigid structure and back support;
 - a plurality of straps attached to said frame enabling a person to carry said frame and said storage pack on one's back in a backpack mode;
 - a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode to a chair mode thereby enabling a person to sit on the apparatus as a chair;
 - a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person.
2. The backpack and chair apparatus of claim 1, wherein the sub-frame is capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to the frame, thereby enabling a person to sit on the apparatus as a chair.
3. The backpack and chair apparatus of claim 1, wherein the storage pack and frame are removably attached.
4. The backpack and chair apparatus of claim 1, further comprising a cushion attached to the sub-frame such that it acts as a back support when the apparatus is in the backpack mode and a seat cushion when the apparatus is in the chair mode.

5. The backpack and chair apparatus of claim 4, wherein the cushion is removably attached to the sub-frame.

6. A backpack and chair apparatus, comprising:
a storage pack;
a frame attached to said storage pack providing rigid structure and back support;
a plurality of straps attached to said frame enabling a person to carry the said frame and said storage pack on one's back in a backpack mode;
a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to the frame, thereby enabling a person to sit on the apparatus as a chair;
a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person;
a cushion attached to the sub-frame such that it acts as a back support when the apparatus is in the backpack mode and a seat cushion when the apparatus is in the chair mode.

7. The backpack and chair apparatus of claim 6, wherein said locking assembly comprises a jointed swing arm pivotally attached at one end to the sub-frame and removably attachable at the other end to the frame, such that one segment of the jointed swing arm acts as a chair leg to the sub-frame when in the chair mode.

8. The backpack and chair apparatus of claim 7, wherein conversion of the sub-frame between backpack mode and chair mode, and correspondingly of the locking assembly between the backpack enabling position and the chair

locking position, requires no tools of assembly and is performed with nominal effort.

9. The backpack and chair apparatus of claim 6, wherein the sub-frame, when in chair mode, enables a person to sit on the apparatus as a chair of normal household stability and size.

10. The backpack and chair apparatus of claim 6, wherein said straps are attached to the frame at a position that facilitates a balanced pack load that does not ride uncomfortably low on a user's back when in the backpack mode.

11. The backpack and chair apparatus of claim 6, wherein the storage pack and frame are removably attached.

12. The backpack and chair apparatus of claim 6, wherein the cushion is removably attached to the sub-frame.

13. A backpack and chair apparatus, comprising:
a storage pack;
a frame attached to said storage pack providing rigid structure and back support;

a plurality of straps attached to said frame enabling a person to carry the said frame and said storage pack on one's back in a backpack mode, wherein said straps are attached to the frame at a position that facilitates a balanced pack load that does not ride uncomfortably low on a user's back when in the backpack mode;

a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to the frame, thereby enabling a person to sit on the apparatus as a chair of

normal household stability and size;

a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person, wherein said locking assembly comprises a plurality of jointed swing arms pivotally attached at one end to the sub-frame and removably attachable at the other end to the frame, such that one segment of each jointed swing arm acts as a chair leg to the sub-frame when in the chair mode;

wherein conversion of the sub-frame between backpack mode and chair mode, and correspondingly of the locking assembly between the backpack enabling position and the chair locking position, requires no tools of assembly and is performed with nominal effort;

a cushion attached to the sub-frame such that it acts as a back support when the apparatus is in the backpack mode and a seat cushion when the apparatus is in the chair mode.

14. The backpack and chair apparatus of claim 13, wherein the locking assembly comprises a plurality of the said jointed swing arm.

15. The backpack and chair apparatus of claim 13, wherein the storage pack and frame are removably attached.

16. The backpack and chair apparatus of claim 13, wherein the cushion is removably attached to the sub-frame.

17. The backpack and chair apparatus of claim 16, wherein the cushion further includes a zipper for ease of removal.

18. The backpack and chair apparatus of Claim 1 further comprising

a strap attached to the sub frame operative as a sway brace when in the chair mode.

19. The backpack and chair apparatus of Claim 1 further comprising a plurality of seat braces operative as stabilizers to prevent the chair from collapsing forward.

20. The backpack and chair apparatus of Claim 3 wherein the pack bag is removably attached with a plurality of turn buckles.

21. The backpack and chair apparatus of Claim 4 wherein the cushion is wedge shaped.

22. The backpack and chair apparatus of Claim 5 wherein the cushion is attached using side release buckles.

23. The backpack and chair apparatus of Claim 7 wherein the locking assembly further comprises a male locking brace and a female brace catch that interconnect to secure the locking assembly.